

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

STATE OF OKLAHOMA, et al.)	
)	
Plaintiff)	
)	
v.)	Case No. 4:05-cv-00329-JOE-SAJ
)	
TYSON FOODS, INC., et al)	
)	
Defendants.)	
)	

**ANSWER AND AFFIRMATIVE DEFENSES OF DEFENDANTS TYSON FOODS, INC.,
TYSON POULTRY, INC., TYSON CHICKEN, INC. AND COBB-VANTRESS, INC. TO
THE FIRST AMENDED COMPLAINT**

Defendants Tyson Foods, Inc., Tyson Poultry, Inc., Tyson Chicken, Inc., and Cobb-Vantress, Inc. (collectively the “Tyson Defendants”), by and through their undersigned counsel, for their Answer and Affirmative Defenses to Plaintiff’s First Amended Complaint (“Complaint”) state as follows:

First, before responding to the numbered paragraphs of the Complaint, the Tyson Defendants deny that this case is a “related case” to *City of Tulsa v. Tyson Foods, et al.*, 01-CV-0900-EA(C). This case involves different parties, claims, water bodies and a distinct geographic area from that at issue in the City of Tulsa case. Accordingly, the Tyson Defendants assert that the purported “related case” designation by Plaintiffs was improvidently asserted, and should be disregarded by the Court.

I. NATURE OF THE CASE

1. The allegations in Paragraph 1 of the Complaint state conclusions of law to which no response is required. To the extent a response is required, the Tyson Defendants state that during the relevant years Cobb-Vantress, Inc. was engaged in the business of breeding

chickens, developing chicken genetics, producing chicken eggs, hatching eggs and producing breeding chickens. Tyson Poultry, Inc. and Tyson Chicken, Inc. were engaged in the business of breeding chickens, producing chicken eggs, hatching eggs, producing chickens for human consumption, processing chickens, and selling processed chicken products. The Tyson Defendants further state that some of the Tyson Defendants contracted with independent-contractor farmers to raise chickens and those independent-contractor farmers owned their own lands, agricultural implements, hatcheries, and the litter produced by the chickens they raised. The Tyson Defendants deny any remaining allegations in Paragraph 1 that are directed against them. The Tyson Defendants lack sufficient knowledge or information to admit or deny any allegations relating to the other defendants in Paragraph 1.

II. JURISDICTION & VENUE

2. The allegations in Paragraph 2 of the Complaint state conclusions of law to which no response is required. To the extent a response is required, the Tyson Defendants deny the allegations in Paragraph 2. Paragraph 2 also makes allegations about the contents of the Complaint. In response to those allegations, the Tyson Defendants state that the Complaint speaks for itself and refer the Court to the Complaint. The Tyson Defendants deny that Plaintiff is entitled to any recovery from the Tyson Defendants.

3. The Tyson Defendants admit that the Illinois River Watershed (“IRW”), including the lands, waters, and sediments therein, is situated, in part, in the Northern District of Oklahoma and in part in the State of Arkansas. The remaining allegations in Paragraph 3 of the Complaint state conclusions of law to which no response is required. To the extent a response is required, the Tyson Defendants deny the remaining allegations in Paragraph 3.

4. The allegations in Paragraph 4 of the Complaint state conclusions of law to which no response is required. To the extent a response is required, the Tyson Defendants deny the allegations in Paragraph 4 inasmuch as they relate to the Tyson Defendants. The Tyson Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 4 inasmuch as they relate to the other defendants.

III. THE PARTIES

A. Plaintiff

5. The allegations in Paragraph 5 of the Complaint state conclusions of law to which no response is required. To the extent a response is required, the Tyson Defendants admit that Oklahoma is a state of the United States of America. To the extent further response is required, the Tyson Defendants deny the remaining allegations in Paragraph 5.

B. Defendants

6. The allegations in Paragraph 6 of the Complaint state conclusions of law to which no response is required. To the extent a response is required, the Tyson Defendants admit that Tyson Foods, Inc. is a Delaware corporation with its principal place of business in Arkansas. The Tyson Defendants deny any remaining allegations in Paragraph 6.

7. The allegations in Paragraph 7 of the Complaint state conclusions of law to which no response is required. To the extent a response is required, the Tyson Defendants admit that Tyson Poultry, Inc. is a Delaware corporation with its principal place of business in Arkansas. The Tyson Defendants state that during the relevant years, Tyson Poultry, Inc. was engaged in the business of breeding chickens, producing chicken eggs, hatching chickens, processing chickens for human consumption, and selling processed chicken products. The Tyson

Defendants further state that Tyson Poultry, Inc. contracted with independent-contractor farmers to raise chickens and those independent-contractor farmers owned their own lands, agricultural implements, hatcheries, and the litter produced by the chickens they raised. The Tyson Defendants deny any remaining allegations in Paragraph 7.

8. The allegations in Paragraph 8 of the Complaint state conclusions of law to which no response is required. To the extent a response is required, the Tyson Defendants admit that Tyson Chicken, Inc. is a Delaware corporation with its principal place of business in Arkansas. The Tyson Defendants state that during the relevant years, Tyson Chicken, Inc. was engaged in the business of breeding chickens, producing chicken eggs, hatching chickens, processing chickens for human consumption, and selling processed chicken products. The Tyson Defendants further state that Tyson Chicken, Inc. contracted with independent-contractor farmers to raise chickens and those independent-contractor farmers owned their own lands, agricultural implements, hatcheries, and the litter produced by the chickens they raised. The Tyson Defendants deny any remaining allegations in Paragraph 8.

9. The allegations in Paragraph 9 of the Complaint state conclusions of law to which no response is required. To the extent a response is required, the Tyson Defendants admit that Cobb-Vantress, Inc. is a Delaware corporation with its principal place of business in Arkansas. The Tyson Defendants state that during the relevant years, Cobb-Vantress, Inc. was engaged in the business of breeding chickens, developing chicken genetics, producing chicken eggs, hatching eggs and producing breeding chickens. The Tyson Defendants further state that Cobb-Vantress, Inc. contracted with independent-contractor farmers to raise chickens and those independent-contractor farmers owned their own lands, agricultural implements, hatcheries, and

the litter produced by the chickens they raised. The Tyson Defendants deny any remaining allegations in Paragraph 9.

10. The allegations in Paragraph 10 of the Complaint state conclusions of law to which no response is required. To the extent a response is required, the Tyson Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 10.

11. The allegations in Paragraph 11 of the Complaint state conclusions of law to which no response is required. To the extent a response is required, the Tyson Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 11.

12. The allegations in Paragraph 12 of the Complaint state conclusions of law to which no response is required. To the extent a response is required, the Tyson Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 12.

13. The allegations in Paragraph 13 of the Complaint state conclusions of law to which no response is required. To the extent a response is required, the Tyson Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 13.

14. The allegations in Paragraph 14 of the Complaint state conclusions of law to which no response is required. To the extent a response is required, the Tyson Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 14.

15. The allegations in Paragraph 15 of the Complaint state conclusions of law to which no response is required. To the extent a response is required, the Tyson Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 15.

16. The allegations in Paragraph 16 of the Complaint state conclusions of law to which no response is required. To the extent a response is required, the Tyson Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 16.

17. The allegations in Paragraph 17 of the Complaint state conclusions of law to which no response is required. To the extent a response is required, the Tyson Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 17.

18. The allegations in Paragraph 18 of the Complaint state conclusions of law to which no response is required. To the extent a response is required, the Tyson Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 18.

19. The allegations in Paragraph 19 of the Complaint state conclusions of law to which no response is required. To the extent a response is required, the Tyson Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 19.

20. To the extent that Paragraph 20 purports to characterize the Complaint, the Complaint speaks for itself and the Tyson Defendants refer the Court to the Complaint.

21. To the extent that Paragraph 21 purports to characterize the Complaint, the Complaint speaks for itself and the Tyson Defendants refer the Court to the Complaint.

IV. FACTUAL ALLEGATIONS

A. The Illinois River Watershed

22. The Tyson Defendants admit that the IRW crosses the Oklahoma-Arkansas border, and that a portion of the IRW is located in Arkansas and a portion is located in

Oklahoma. The Tyson Defendants lack sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 22.

23. The Tyson Defendants admit that the major tributaries within the IRW are: the Illinois River, the Baron (a/k/a Barren) Fork River, the Caney Creek, and the Flint Creek. The Tyson Defendants lack sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 23.

24. The allegations in Paragraph 24 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, the Tyson Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 24.

25. The Tyson Defendants admit that portions of the IRW have been and are used for recreational and wildlife propagation purposes. The Tyson Defendants state that such recreational uses have been and are a substantial contributor to nutrients and “pollutants” in the waters of the IRW. The Tyson Defendants lack sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 25.

26. The Tyson Defendants admit that the Illinois River feeds into Tenkiller Ferry Lake. The Tyson Defendants lack sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 26.

27. The Tyson Defendants admit that portions of the IRW have been and are used for recreational purposes. The Tyson Defendants state that these recreational uses have been and are a substantial contributor to nutrients and “pollutants” in the waters of the IRW. The

Tyson Defendants lack sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 27.

28. The Tyson Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 28.

29. The allegations in Paragraph 29 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, the Tyson Defendants deny the allegations in Paragraph 29. Pleading affirmatively, the Tyson Defendants state that declining or “degrading” water quality through eutrophication, erosion, sedimentation and other factors is a natural and expected part of the life cycle of all reservoirs and impounded river systems.

30. The allegations in Paragraph 30 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, the Tyson Defendants deny the allegations in Paragraph 30.

31. The allegations in Paragraph 31 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, the Tyson Defendants deny all allegations directed against them in Paragraph 31. The Tyson Defendants lack sufficient knowledge or information to admit or deny the allegations directed against the other defendants in Paragraph 31.

B.

32. The Tyson Defendants state that during the relevant years Cobb-Vantress, Inc. was engaged in the business of breeding chickens, developing chicken genetics, producing

chicken eggs, hatching eggs and producing breeding chickens. Tyson Poultry, Inc. and Tyson Chicken, Inc. were engaged in the business of breeding chickens, producing chicken eggs, hatching eggs, producing chickens for human consumption, processing chickens, and selling processed chicken products. The Tyson Defendants complied with all environmental laws in these activities. The Tyson Defendants further state that some of the Tyson Defendants contracted with independent-contractor farmers to raise chickens and those independent-contractor farmers owned their own lands, agricultural implements, hatcheries, and the litter produced by the chickens they raised. The Tyson Defendants deny any remaining allegations in Paragraph 32 that are directed against them. The Tyson Defendants lack sufficient knowledge or information to admit or deny any allegations relating to the other defendants in Paragraph 32.

33. The Tyson Defendants deny the allegations in Paragraph 33.

34. The Tyson Defendants deny the allegations in Paragraph 34.

35. The allegations in Paragraph 35 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, the Tyson Defendants deny the allegations directed against them in Paragraph 35. The Tyson Defendants lack sufficient knowledge or information to admit or deny the allegations directed against the other defendants in Paragraph 35.

36. The allegations of Paragraph 36 of the Complaint attempt to characterize contracts between defendants and independent-contractor farmers. The Tyson Defendants state that these contracts speak for themselves and refer the Court to the contracts. The Tyson Defendants lack sufficient knowledge or information to admit or deny the allegations directed against the other defendants in Paragraph 36.

37. The Tyson Defendants admit that some of the Tyson Defendants have supplied independent-contractor farmers with chicks and/or poults and have picked up the birds when the birds are ready to be processed for human consumption. The Tyson Defendants lack sufficient knowledge or information to admit or deny the allegations directed against the other defendants in Paragraph 37. To the extent not expressly admitted herein, the Tyson Defendants deny the allegations in Paragraph 37.

38. The Tyson Defendants admit that Cobb-Vantress, Inc., Tyson Poultry, Inc. and Tyson Chicken, Inc. usually retain title to birds that they provide to independent-contractor farmers. The Tyson Defendants lack sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 38.

39. The Tyson Defendants admit that some of the Tyson Defendants have formulated, provided, and owned feed that is fed to poultry during the growing process. The Tyson Defendants lack sufficient knowledge or information to admit or deny the allegations directed against the other defendants in Paragraph 39. To the extent not expressly admitted herein, the Tyson Defendants deny the allegations in Paragraph 39.

40. The Tyson Defendants deny the allegations in Paragraph 40.

41. The Tyson Defendants deny the allegations in Paragraph 41.

42. The Tyson Defendants deny the allegations in Paragraph 42.

43. The allegations in Paragraph 43 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, the Tyson Defendants deny the allegations in Paragraph 43.

44. The allegations in Paragraph 44 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, the Tyson Defendants deny the allegations in Paragraph 44.

45. The allegations in Paragraph 45 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, the Tyson Defendants deny the allegations in Paragraph 45.

C.

46. The Tyson Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 46.

47. The allegations in Paragraph 47 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, the Tyson Defendants deny the allegations in Paragraph 47.

D.

48. The Tyson Defendants deny the allegations in Paragraph 48.

49. The Tyson Defendants deny the allegations in Paragraph 49.

50. The Tyson Defendants deny the allegations in Paragraph 50.

51. The Tyson Defendants deny the allegations in Paragraph 51.

52. The Tyson Defendants deny the allegations in Paragraph 52.

53. The Tyson Defendants deny the allegations in Paragraph 53.

54. The Tyson Defendants deny the allegations in Paragraph 54.

55. The Tyson Defendants deny the allegations in Paragraph 55.

56. The allegations in Paragraph 56 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, the Tyson Defendants deny the allegations in Paragraph 56.

57. The Tyson Defendants deny the allegations in Paragraph 57.

58. The Tyson Defendants deny the allegations in Paragraph 58.

59. The Tyson Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 59.

60. The Tyson Defendants deny the allegations in Paragraph 60.

61. The allegations in Paragraph 61 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, the Tyson Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 61.

62. The allegations in Paragraph 62 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, the Tyson Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 62.

63. The Tyson Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 63.

64. The Tyson Defendants deny the allegations in Paragraph 64.

E.

65. Paragraph 65 makes allegations about the content of an advertisement.

The Tyson Defendants state that the advertisement speaks for itself and the Tyson Defendants refer the Court to the advertisement.

66. Paragraph 66 makes allegations about the content of a letter. The Tyson

Defendants state that the letter speaks for itself and the Tyson Defendants refer the Court to the letter.

67. Paragraph 67 makes allegations about the content of a letter. The Tyson

Defendants state that the letter speaks for itself and the Tyson Defendants refer the Court to the letter.

68. The Tyson Defendants deny the allegations in Paragraph 68.

69. The allegations in Paragraph 69 of the Complaint state conclusions of law

to which no response is required. To the extent that a response is required, the Tyson Defendants deny the allegations in Paragraph 69.

V. CAUSES OF ACTION

A. Count 1: CERCLA Cost Recovery – 42 U.S.C. § 9607

70. The Tyson Defendants hereby incorporate by reference, as though fully set

forth herein, their previous responses to the allegations in the preceding paragraphs of the Complaint.

71. The allegations in Paragraph 71 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, the Tyson Defendants deny the allegations in Paragraph 71.

72. The allegations in Paragraph 72 of the Complaint are too vague for the Tyson Defendants to admit or deny. Moreover, the allegations in Paragraph 72 state conclusions of law to which no response is required. To the extent that a response is required, the Tyson Defendants deny the allegations in Paragraph 72.

73. The allegations in Paragraph 73 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, the Tyson Defendants deny the allegations in Paragraph 73.

74. The allegations in Paragraph 74 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, the Tyson Defendants deny the allegations in Paragraph 74.

75. The allegations in Paragraph 75 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, the Tyson Defendants deny the allegations in Paragraph 75.

76. The allegations in Paragraph 76 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, the Tyson Defendants deny the allegations in Paragraph 76.

77. The allegations in Paragraph 77 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, the Tyson Defendants deny the allegations in Paragraph 77.

B. Count 2: CERCLA Natural Resources Damages – 42 U.S.C. § 9607

78. The Tyson Defendants hereby incorporate by reference, as though fully set forth herein, their previous responses to the allegations in the preceding paragraphs of the Complaint.

79. The allegations in Paragraph 79 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, the Tyson Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 79.

80. The allegations in Paragraph 80 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, the Tyson Defendants deny the allegations in Paragraph 80.

81. The allegations in Paragraph 81 of the Complaint are too vague for the Tyson Defendants to admit or deny. Moreover, the allegations in Paragraph 81 state conclusions of law to which no response is required. To the extent that a response is required, the Tyson Defendants deny the allegations in Paragraph 81.

82. The allegations in Paragraph 82 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, the Tyson Defendants deny the allegations in Paragraph 82.

83. The allegations in Paragraph 83 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, the Tyson Defendants deny the allegations in Paragraph 83.

84. The allegations in Paragraph 84 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, the Tyson Defendants deny the allegations in Paragraph 84.

85. The allegations in Paragraph 85 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, the Tyson Defendants deny the allegations in Paragraph 85.

86. The allegations in Paragraph 86 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, the Tyson Defendants deny the allegations in Paragraph 86.

87. The allegations in Paragraph 87 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, the Tyson Defendants deny the allegations in Paragraph 87.

88. The allegations in Paragraph 88 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, the Tyson Defendants deny the allegations in Paragraph 88.

89. The allegations in Paragraph 89 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, the Tyson Defendants deny the allegations in Paragraph 89.

C. Count 3: SWDA Citizen Suit

90. The Tyson Defendants hereby incorporate by reference, as though fully set forth herein, their previous responses to the allegations in the preceding paragraphs of the Complaint.

91. The allegations in Paragraph 91 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, the Tyson Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 91.

92. The allegations in Paragraph 92 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, the Tyson Defendants deny the allegations in Paragraph 92.

93. The allegations in Paragraph 93 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, the Tyson Defendants deny the allegations in Paragraph 93.

94. The allegations in Paragraph 94 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, the Tyson Defendants deny the allegations in Paragraph 94.

95. The allegations in Paragraph 95 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, the Tyson Defendants deny the allegations in Paragraph 95.

96. The allegations in Paragraph 96 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, the Tyson Defendants deny the allegations in Paragraph 96.

97. The allegations in Paragraph 97 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, the Tyson Defendants deny the allegations in Paragraph 97.

D. Count 4: State Law Nuisance

98. The Tyson Defendants hereby incorporate by reference, as though fully set forth herein, their previous responses to the allegations in the preceding paragraphs of the Complaint.

99. The allegations in Paragraph 99 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, the Tyson Defendants deny the allegations in Paragraph 99.

100. The allegations in Paragraph 100 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, the Tyson Defendants deny the allegations in Paragraph 100.

101. The allegations in Paragraph 101 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, the Tyson Defendants deny the allegations in Paragraph 101.

102. The allegations in Paragraph 102 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, the Tyson Defendants deny the allegations in Paragraph 102.

103. The allegations in Paragraph 103 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, the Tyson Defendants deny the allegations in Paragraph 103.

104. The allegations in Paragraph 104 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, the Tyson Defendants deny the allegations in Paragraph 104.

105. The allegations in Paragraph 105 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, the Tyson Defendants deny the allegations in Paragraph 105.

106. The allegations in Paragraph 106 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, the Tyson Defendants deny the allegations in Paragraph 106.

107. The allegations in Paragraph 107 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, the Tyson Defendants deny the allegations in Paragraph 107.

108. The allegations in Paragraph 108 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, the Tyson Defendants deny the allegations in Paragraph 108.

E. Count 5: Federal Common Law Nuisance

109. The Tyson Defendants hereby incorporate by reference, as though fully set forth herein, their previous responses to the allegations in the preceding paragraphs of the Complaint.

110. The allegations in Paragraph 110 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, the Tyson Defendants deny the allegations in Paragraph 110.

111. The allegations in Paragraph 111 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, the Tyson Defendants deny the allegations in Paragraph 111.

112. The allegations in Paragraph 112 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, the Tyson Defendants deny the allegations in Paragraph 112.

113. The allegations in Paragraph 113 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, the Tyson Defendants deny the allegations in Paragraph 113.

114. The allegations in Paragraph 114 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, the Tyson Defendants deny the allegations in Paragraph 114.

115. The allegations in Paragraph 115 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, the Tyson Defendants deny the allegations in Paragraph 115.

116. The allegations in Paragraph 116 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, the Tyson Defendants deny the allegations in Paragraph 116.

117. The allegations in Paragraph 117 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, the Tyson Defendants deny the allegations in Paragraph 117.

118. The allegations in Paragraph 118 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, the Tyson Defendants deny the allegations in Paragraph 118.

F. Count 6: Trespass

119. The Tyson Defendants hereby incorporate by reference, as though fully set forth herein, their previous responses to the allegations in the preceding paragraphs of the Complaint.

120. The allegations in Paragraph 120 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, the Tyson Defendants deny the allegations in Paragraph 120.

121. The allegations in Paragraph 121 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, the Tyson Defendants deny the allegations in Paragraph 121.

122. The allegations in Paragraph 122 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, the Tyson Defendants deny the allegations in Paragraph 122.

123. The allegations in Paragraph 123 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, the Tyson Defendants deny the allegations in Paragraph 123.

124. The allegations in Paragraph 124 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, the Tyson Defendants deny the allegations in Paragraph 124.

125. The allegations in Paragraph 125 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, the Tyson Defendants deny the allegations in Paragraph 125.

126. The allegations in Paragraph 126 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, the Tyson Defendants deny the allegations in Paragraph 126.

127. The allegations in Paragraph 127 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, the Tyson Defendants deny the allegations in Paragraph 127.

G. Count 7: Violation of 27A Okla. Stat. § 2-6-105 & 2 Okla. Stat. § 2-18.1

128. The Tyson Defendants hereby incorporate by reference, as though fully set forth herein, their previous responses to the allegations in the preceding paragraphs of the Complaint.

129. The allegations in Paragraph 129 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, the Tyson Defendants deny the allegations in Paragraph 129.

130. The allegations in Paragraph 130 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, the Tyson Defendants deny the allegations in Paragraph 130.

131. The allegations in Paragraph 131 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, the Tyson Defendants deny the allegations in Paragraph 131.

132. The allegations in Paragraph 132 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, the Tyson Defendants deny the allegations in Paragraph 132.

**H. Count 8: Violation of 2 Okla. Stat. § 10-9.7 and Oklahoma.
Administrative Code § 35:17-5-5**

133. The Tyson Defendants hereby incorporate by reference, as though fully set forth herein, their previous responses to the allegations in the preceding paragraphs of the Complaint.

134. The allegations in Paragraph 134 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, the Tyson Defendants deny the allegations in Paragraph 134.

135. The allegations in Paragraph 135 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, the Tyson Defendants deny the allegations in Paragraph 135.

136. The allegations in Paragraph 136 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, the Tyson Defendants deny the allegations in Paragraph 136.

I. Count 9: Violation of Oklahoma Administrative Code § 25:17-3-14

137. The Tyson Defendants hereby incorporate by reference, as though fully set forth herein, their previous responses to the allegations in the preceding paragraphs of the Complaint.

138. The allegations in Paragraph 138 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, the Tyson Defendants deny the allegations in Paragraph 138.

139. The allegations in Paragraph 139 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, the Tyson Defendants deny the allegations in Paragraph 139.

J. Count 10: Unjust Enrichment / Restitution / Disgorgement

140. The Tyson Defendants hereby incorporate by reference, as though fully set forth herein, their previous responses to the allegations in the preceding paragraphs of the Complaint.

141. The allegations in Paragraph 141 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, the Tyson Defendants deny the allegations in Paragraph 141.

142. The allegations in Paragraph 142 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, the Tyson Defendants deny the allegations in Paragraph 142.

143. The allegations in Paragraph 143 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, the Tyson Defendants deny the allegations in Paragraph 143.

144. The allegations in Paragraph 144 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, the Tyson Defendants deny the allegations in Paragraph 144.

145. The allegations in Paragraph 145 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, the Tyson Defendants deny the allegations in Paragraph 145.

146. The allegations in Paragraph 146 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, the Tyson Defendants deny the allegations in Paragraph 146.

147. The allegations in Paragraph 147 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, the Tyson Defendants deny the allegations in Paragraph 147.

VI. PRAYER FOR RELIEF

The Tyson Defendants deny that plaintiff is entitled to any of the relief it requests.

* * *

The Tyson Defendants deny each and every allegation of the Complaint to the extent not expressly admitted herein.

AFFIRMATIVE DEFENSES

The Tyson Defendants state the following affirmative defenses without assuming any burden of proof or production that would otherwise rest on the State.

First Affirmative Defense

The Complaint is barred because it fails to state claims upon which relief can be granted.

Second Affirmative Defense

The Complaint is barred to the extent that the claims are outside the applicable statutes of limitations.

Third Affirmative Defense

The Complaint is barred by the doctrines of waiver and estoppel.

Fourth Affirmative Defense

The Complaint is barred by the doctrines of laches, unclean hands, and in pari delicto.

Fifth Affirmative Defense

The damages sought by the State are excessive.

Sixth Affirmative Defense

The Complaint is barred by Plaintiffs' failure to join indispensable parties.

Seventh Affirmative Defense

To the extent that the Complaint seeks damages or injunctive relief with respect to "natural resources" owned by or held in trust for Indian Tribes, the Complaint must be dismissed due to the Plaintiffs' lack of standing.

Eighth Affirmative Defense

Plaintiffs lack standing to assert some or all of the claims in the Complaint.

Ninth Affirmative Defense

The Complaint is barred by the provisions of the Arkansas-Oklahoma Arkansas River Basin Compact.

Tenth Affirmative Defense

The Complaint is barred by the Right to Farm Statutes codified at ARKANSAS CODE ANNOTATED § 2-4-101 *et seq.* and OKLA. STAT. , tit. 50 § 1.1.

Eleventh Affirmative Defense

Some or all of Plaintiffs' claims are barred by their failure to exhaust administrative remedies.

Twelfth Affirmative Defense

Some or all of Plaintiffs' claims are barred under the doctrines of comparative or contributory fault and/or negligence because Plaintiffs have engaged in acts or omissions which have caused or contributed to the damages alleged in their Complaint..

Thirteenth Affirmative Defense

Plaintiffs' alleged injuries, if any, have been caused by the acts and/or omissions of third parties over whom the Tyson Defendants had no control or right to control and for whose conduct the Tyson Defendants are not legally responsible.

Fourteenth Affirmative Defense

To the extent that liability under the Complaint is predicated on the claim that independent poultry farmers are the servants, employees or agents of the Tyson Defendants, all such claims are preempted by the provisions of the Packers and Stockyards Act, 7 U.S.C. § 181 *et. seq.*, and the and the Agricultural Fair Practices Act, 7 U.S.C. § 2302, *et seq.*

Fifteenth Affirmative Defense

The Plaintiffs' state common law claims of nuisance, trespass and unjust enrichment are precluded by the existence and provisions of the Oklahoma Registered Poultry Feeding Operations Act, OKLA. STAT., tit. 2 § 10-9.1 *et seq.* and the Oklahoma Concentrated Animal Feeding Operations Act, OKLA. STAT., tit. 2 § 9-201 *et seq.*, among other state laws.

Sixteenth Affirmative Defense

Some or all of the claims asserted in the Complaint are preempted by the Clean Water Act and /or other provisions of federal law.

Seventeenth Affirmative Defense

Some or all of the claims asserted in the Complaint based upon federal common law fail to state a claim upon which relief can be granted because there is no federal common law that governs the conduct alleged in the Complaint.

Eighteenth Affirmative Defense

To the extent the Complaint seeks to establish liability under Oklahoma common law, statutes, and/or regulations for conduct or actions occurring in Arkansas, such claims are barred by the Commerce Clause, the Due Process Clause of the 14th Amendment, comity, and the federalism principles inherent in the structure of the United States Constitution.

Nineteenth Affirmative Defense

The Complaint's claim for "cost recovery" under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601, *et seq.*, is barred by the State of Oklahoma as a responsible party.

Twentieth Affirmative Defense

The Complaint's claim for relief pursuant to the Solid Waste Disposal Act ("RCRA"), 42 U.S.C. § 6972, is barred by Plaintiffs' lack of standing to pursue a claim under the citizen suit provisions of that statute.

Twenty-First Affirmative Defense

Plaintiffs' claims are barred in whole or in part because Plaintiffs failed to provide adequate pre-suit notice in compliance with 42 U.S.C. § 6972(a)(1)(B), (b)(2)(A), and 40 C.F.R. § 254.3.

Twenty-Second Affirmative Defense

The Complaint's claim for relief pursuant to RCRA is barred because poultry litter used as a fertilizer is not a "solid waste" within the meaning of RCRA.

Twenty-Third Affirmative Defense

The Complaint's claim for relief pursuant to RCRA is precluded by the provisions of the Clean Water Act.

Twenty-Fourth Affirmative Defense

The Complaint's claims for relief pursuant to RCRA and CERCLA are barred by exemptions and exclusions contained within those statutes.

Twenty-Fifth Affirmative Defense

The Court does not have subject matter jurisdiction over some or all of the claims alleged in the Complaint.

Twenty-Sixth Affirmative Defense

Plaintiffs are barred from using any damages recovered in this case, and in particular are barred from using any natural resource damages, to pay attorney fees.

Twenty-Seventh Affirmative Defense

Plaintiffs' claims are barred in whole or in part because the statutory or regulatory provisions upon which they are based are unconstitutionally void for vagueness or otherwise violate due process.

Twenty-Eighth Affirmative Defense

Some or all of Plaintiffs are not the real parties in interest as to some or all of the claims and damages alleged in the Complaint.

Twenty-Ninth Affirmative Defense

Plaintiffs' claims are barred in whole or in part because Plaintiffs have failed to mitigate their alleged damages.

Thirtieth Affirmative Defense

Some or all of Plaintiffs' claims are barred because Plaintiffs consented to the activities and/or omissions asserted in the Complaint. Plaintiffs' actions in consenting to the acts and/or omissions include, but are not limited to: (a) specifically authorizing (by virtue of the laws and regulations passed under the authority of the Oklahoma Legislature) the land application of poultry litter in the IRW; (b) providing regulatory oversight of the land application of poultry litter through the Oklahoma Department of Agriculture, Food and Forestry.

Thirty-First Affirmative Defense

Plaintiffs have not joined the party/parties at fault for their alleged injuries. The Tyson Defendants reserve their rights at trial to seek an allocation of fault to, and contribution from, such party or parties.

Thirty-Second Affirmative Defense

Some or all of Plaintiffs' claims are not amendable to judicial resolution because of the primary jurisdiction doctrine and the authority of the Oklahoma Department of Environmental Quality, the Oklahoma Department of Agriculture, Food and Forestry, other Oklahoma state agencies, the Arkansas Department of Environmental Quality, the Arkansas Department of Health, the Arkansas Forestry Commission, the Arkansas Soil and Water

Conservation Commission, other Arkansas state agencies, and the United States Environmental Protection Agency.

Thirty-Third Affirmative Defense

Some or all of Plaintiffs' claims are not amenable to judicial resolution because they present a political question.

Thirty-Fourth Affirmative Defense

Any award of punitive damages to Plaintiffs in this case violates constitutional safeguards afforded to Defendants by the United States Constitution and the constitutions of Oklahoma and Arkansas.

Thirty-Fifth Affirmative Defense

Some or all of Plaintiffs' claims are preempted by rules or regulations issued pursuant to the authority of the United States of America and/or the State of Oklahoma or the State of Arkansas.

Thirty-Sixth Affirmative Defense

Some or all of Plaintiffs' claims are not actionable under the federal and/or state statutes and regulations identified in the Complaint.

Thirty-Seventh Affirmative Defense

Some or all of Plaintiffs' claims are barred because Plaintiffs have suffered no damages.

Thirty-Eighth Affirmative Defense

By virtue of the Plaintiffs' conduct with regard to the IRW, it is a party responsible, at least in part, for the alleged injuries; therefore, the Tyson Defendants' share of liability, if any, is several.

Thirty-Ninth Affirmative Defense

The conduct alleged in the Complaint cannot constitute “pollution” under some or all of the counts brought under Oklahoma state law because neither the Director of the Oklahoma Department of Environmental Quality nor the Oklahoma Department of Agriculture, Food and Forestry have deemed it as such.

Fortieth Affirmative Defense

The conduct alleged in the Complaint cannot constitute a nuisance per se under some or all of the counts brought under Oklahoma state law because the Director of the Oklahoma Department of Environmental Quality has not deemed it as such.

Forty-First Affirmative Defense

Counts 1, 2 and 3 of Plaintiffs’ Complaint should be dismissed for failure to state a claim for which relief can be granted, because poultry litter does not fall within the statutory or regulatory definition of a “hazardous substance” or “hazardous waste.”

Forty-Second Affirmative Defense

Counts 1 and 2 of the Complaint should be dismissed due to Plaintiffs’ failure to identify and describe any specific lands it asserts is a “facility” within the meaning of CERCLA.

Forty-Third Affirmative Defense

Plaintiffs’ Complaint should be dismissed, in whole or in part, because the Attorney General of the State of Oklahoma lacks the constitutional or statutory authority to bring one or more of the purported claims on behalf of the State of Oklahoma.

Forty-Fourth Affirmative Defense

While continuing to deny the material allegations of the Complaint, the Tyson Defendants assert that Counts 1 and 2 of Plaintiffs’ Complaint should be dismissed due to

Plaintiffs' inability to prove that the release of an alleged hazardous substance related to the operations of the Tyson Defendants would have caused the alleged natural resource damages apart from the alleged operations of the other Defendants.

Forty-Fifth Affirmative Defense

Count 2 of the Complaint should be dismissed due to Plaintiffs' failure to perform a natural resource damage assessment pursuant to the applicable federal regulations.

Forty-Sixth Affirmative Defense

The Complaint fails to state any facts to support any claim that any act or omission of the Tyson Defendants directly and proximately resulted in any injury for which Plaintiffs can recover.

Forty-Seventh Affirmative Defense

The Tyson Defendants, at all times relevant to Plaintiffs' claims acted responsibly, in good faith, and with the skill, prudence, and diligence exercised by reasonably prudent operators and/or integrators in the poultry industry.

Forty-Eighth Affirmative Defense

The Tyson Defendants have conducted all of their operations and activities in accordance with industry standards, government requirements, and the prevailing state of the art and technology in the poultry industry.

Forty-Ninth Affirmative Defense

While continuing to deny the material allegations of the Complaint, the Tyson Defendants state that they cannot be held liable for the land application of poultry litter by those third parties, who through a private transaction with poultry farmers, acquire poultry litter for their own use according to their own terms.

Fiftieth Affirmative Defense

Plaintiffs' Complaint should be dismissed, in whole or in part, due to Plaintiffs' attempt to recover multiple remedies for the same alleged injury.

Fifty-First Affirmative Defense

Plaintiffs' claim for pre-judgment interest should be dismissed for failure to state a claim upon which relief can be granted, because the amount of damages, if any, was not readily ascertainable at the time Plaintiffs' lawsuit was commenced.

Fifty-Second Affirmative Defense

The Tyson Defendants hereby adopt and incorporate by reference any other statement of defense asserted by any other Defendant in this action.

Fifty-Third Affirmative Defense

Plaintiffs' claims are barred by the Oklahoma and/or Arkansas constitutions including (but not limited to) the separation of powers provisions of those documents.

Fifty-Fourth Affirmative Defense

The Tyson Defendants expressly reserve the right to raise such additional affirmative defenses as may be established during discovery and by the evidence in this case.

* * *

WHEREFORE, the Tyson Defendants asks that judgment be entered:

- (1) dismissing the Complaint with prejudice; and
- (2) awarding the Tyson Defendants their costs, attorney fees, and such other

and further relief as the Court deems just and proper.

Dated: October 3, 2005

Respectfully submitted,

/s/ Stephen L. Jantzen

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and Cobb-Vantress, Inc.***

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of October, 2005, I electronically transmitted the foregoing document to the Clerk of the Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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and I further certify that a true and correct copy of the above and foregoing will be mailed via regular mail through the United States Postal Service, postage properly paid, on the following who are not registered participants of the ECF System:

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